



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------|-------------|----------------------|---------------------|------------------|
| 09/926,694 | 02/28/2002 | Andreas Ulli | 5085 | 3017 |
| 26936 | 7590 | 09/08/2004 | | |
| SHOEMAKER AND MATTARE, LTD | | | EXAMINER | |
| 10 POST OFFICE ROAD - SUITE 110 | | | ZIRKER, DANIEL R | |
| SILVER SPRING, MD 20910 | | | | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1771 | |

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|----------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | Examiner | Group Art Unit | |

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE — 3 — MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on 6/17/04

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 8-14 is/are pending in the application.

Of the above claim(s) 11, 12 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 8-10, 13, 14 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. _____.

Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Applicant should remove from the specification on page 1, first paragraph any references to the claim preamble of the independent patent claims, which language currently exists. Additionally, the Examiner again notes for the record that dependent claims 11 and 12 are again renumbered as claims 13 and 14 since non-elected claims 11 and 12 were previously present in the application.

3. Claims 8-10 and renumbered claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over applicant's admissions in the specification at page 2, second complete paragraph taken in view of either Groshens -579 or -800, substantially for reasons of record, together with the following additional observations. To at least partially reiterate, applicant admits that the structure of a suitable air-permeable, water impermeable substrate which can be an air permeable, water impermeable fabric that is coated on one surface with a desired pattern of adhesive dots and which the Examiner believes is clearly within the skill of the art to coat on the opposing opposite surface with another desired pattern of adhesive dots to form an intermediate product is known, as is the subsequent lamination of this particular double sided adhesive coated fabric

which is laminated to a sheet of a suitable material on each of its outer surfaces. The admission lacks a teaching that each of the adhesive discontinuous coatings is at least partially aligned with its opposing counterpart on the opposite surface. Each of the secondary references, however, discloses the concept of coating a suitable fabric or other chosen layer on both opposing outer surfaces with a suitable, e.g. dot pattern on each outer surface that can be aligned in almost any manner desired. Accordingly, one of ordinary skill, motivated by the desire to form a suitable water proof fabric which would further exhibit desirable air breathable properties of the resulting composite article would have more than enough motivation to deposit the coating of adhesive dots in the "at least partially aligned" discontinuous adhesive patterns present on opposing outer surfaces of a suitable material taught by each of the secondary references and thereby either form, or clearly render obvious, the claimed genus of articles set forth in applicant's claims. Note for claims 8-10 each of the references teaches that it is often desirable to have the opposing discontinuous adhesive patterns directly opposite one another in cross-section, but this is not necessarily required, thereby meeting the limitations set forth in renumbered claims 13 and 14. With respect to applicant's remarks, it is noted that paragraph Nos. 1 and 4 on

page 4 of the response refer only to the cited prior art references and do not mention the Examiner's great reliance on the admission set forth in applicant's specification, although it is noted that the paragraph bridging pages 5 and 6 does refer to the presence of each of the secondary references. With respect to the Declaration of inventor Ulli, it is unfortunately noted that all of the various Annexes found in the Declaration and which encompass over two thirds of the Declaration are present in only German and additionally do not appear to be commensurate in scope with applicant's claims, although they do appear promising in nature if further prosecution is contemplated. Additionally, the Examiner notes that it was hoped that applicant would supply a commercial success Declaration which he had mentioned he hoped he could obtain in the interview held on April 21, 2004. In summary, the Examiner believes that the prima facie case of record has not been rebutted.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL

ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (571) 272-1486. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status

Serial No. 09/926,694

-6-

Art Unit 1771

information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dzirker:cdc

August 30, 2004

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1300
1700

Daniel Zirker